

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DOUGLAS C. GERDING, DECEASED**

Claimant

VS.

**DART CHEROKEE BASIN OPERATING CO LLC  
CHEROKEE BASIN PIPELINE LLC**

Respondent

AND

**AMERICAN ZURICH INSURANCE CO.**

Insurance Carrier

Docket No. 1,041,659

**ORDER**

Respondent requested review of the October 21, 2010 Award by Administrative Law Judge (ALJ) Nelsonna Potts Barnes. The Board, including Pro Tem Thomas D. Arnhold, of Hutchinson, Kansas,<sup>1</sup> took this matter up for the purpose of addressing the Board's concern as to the minor children, who purport to be the decedent's wholly dependent children, and the fact that they were unrepresented in the litigation of this claim. Present at this telephonic hearing were Thomas W. Warner, counsel for Jolie Gerding, and Kendall R. Cunningham, counsel for respondent and its insurance carrier.

Prior to the hearing, the Board was advised that a guardianship had recently been created for the purpose of appointing a guardian ad litem for the minor children who are involved in this claim and each claim an interest in any potential award. Those children include one child who was born of decedent's first marriage, Jessica Gerding, two step children, Justin Wallace and Jalie Wallace, and a fourth child, Austin Gerding, who was born during decedent's marriage to Jolie Gerding.

As the Board noted during the hearing, pursuant to K.S.A. 44-510b, these children each have potentially conflicting interests in the pending litigation. At no point in the litigation of this matter were any of these children represented. And while the ALJ made a finding that decedent's accidental injury was compensable, she made no finding with

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<sup>1</sup> This appointment was made in light of the retirement of Board Member, Carol Foreman.

respect to the minor children or their dependency, nor did the ALJ distribute the Award monies as required and provided in K.S.A. 44-510b.

Given the fact that the minor children were unrepresented in this litigation, the Board finds that, in the interests of justice, the Award must be set aside in its entirety and the matter remanded to the ALJ. To do otherwise could bind those minor children to a legal outcome for which they were unrepresented or cause additional litigation in the future.

The minor children, *should be represented by their own separate counsel*, and be allowed to litigate all the issues originally presented to the ALJ, including the opportunity to open the record for additional evidence, if requested.<sup>2</sup> Once all parties who claim an entitlement to any of the potential benefits afforded by the Kansas Workers Compensation Act have had an opportunity to participate in the litigation of this claim, the ALJ shall then reconsider this matter and rule on all of the outstanding issues presented by the parties.

The Award is hereby vacated, set aside and remanded to the ALJ for the proceedings set forth above. The Board does not retain jurisdiction of this matter. If the parties wish to appeal any further actions or decision by the ALJ, an appropriate appeal must be timely filed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February 2011.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Thomas M. Warner, Attorney for Claimant  
       Kendall R. Cunningham, Attorney for Respondent and its Insurance Carrier  
       Nelsonna Potts Barnes, Administrative Law Judge

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<sup>2</sup> If found compensable, the ALJ shall specifically reopen the record to determine the dependency issues and make findings with respect to each minor child's qualifications under the applicable statute to receive death benefits.